

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RONNIE MCDONALD #162028,)	
)	
Petitioner,)	Case No. 2:07-cv-98
)	
v.)	HON. GORDON J. QUIST
)	
UNKNOWN MCQUIGGIN,)	
)	
Respondent.)	
_____)	

ORDER OF DISMISSAL

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On July 3, 2007, the court issued an order requiring Petitioner to file an amended petition because of insufficiencies in his original petition. Petitioner was sent a form for filing a habeas corpus petition as prescribed by local rules of the Western District of Michigan and was instructed to file his amended petition using the form. Rule 2(c), RULES GOVERNING § 2254 CASES; W.D. Mich. LCivR 5.6(a). The form allows an applicant to list the grounds for relief, as well as the factual circumstances supporting each ground. Petitioner was allowed thirty days from the date of entry of the order to refile his petition. Petitioner was warned that his case would be dismissed without prejudice should he fail to comply with the order. Thirty days have now elapsed, and Petitioner has not complied with the court's order. Instead, Petitioner has filed a motion for reconsideration of this order, claiming that he is attempting to file a civil rights action "in conjunction with" a habeas corpus action. However, such an action is not permissible. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973) (habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release); *Moore v. Pemberton*, 110 F.3d 22 (7th Cir. 1997) (reasons for not construing a § 1983 action as one seeking habeas relief include (1) potential

application of *Heck v. Humphrey*, 512 U.S. 477 (1994), (2) differing defendants, (3) differing standards of § 1915(a)(3) and § 2253 (c), (4) differing fee requirements, (5) potential application of second or successive petition doctrine or three-strikes rules of § 1915(g)). Petitioner fails to supply any other reason why he is unable to file an amended petition. Accordingly, dismissal of this action without prejudice is appropriate.

Therefore:

IT IS ORDERED that the captioned case be and hereby is **DISMISSED** without prejudice.

Dated: November 15, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE